

AN ORDINANCE CONCERNING THE CONSTRUCTION OF ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS OF THE CITY OF FORT WAYNE, THE ISSUANCE OF REVENUE BONDS TO PROVIDE THE COST THEREOF, THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SAID BONDS, THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS, OTHER MATTERS CONNECTED THEREWITH, AND REPEALING ORDINANCES INCONSISTENT THEREWITH.

WHEREAS, the City of Fort Wayne (the "City") has heretofore established, constructed and financed waterworks, and now owns and operates said waterworks pursuant to I.C. 8-1.5, as amended, and other applicable laws (collectively, the "Act"); and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, finds that said waterworks is in need of certain additions and improvements, and that plans and specifications for said additions and improvements are hereby approved by said Common Council, and that said additions and improvements shall include the equipment, structures appurtenances, described on Exhibit A (the "Project"); and

WHEREAS, there are currently outstanding bonds issued on account of the refunding of the City's prior waterworks revenue bonds and payable out of the revenues therefrom, designated as the City's "Waterworks Refunding Revenue Bonds of 1993," (the "1993 Bonds"), authorized by Special Ordinance No. 5-41-93, adopted by the Common Council on May 18, 1993, and Special Ordinance No. 5-54-93, adopted by the Common Council on June 22, 1993 (collectively, the "1993 Ordinance"); and

WHEREAS, the Common Council of the City of Fort Wayne finds that all tests for the issuance of parity Bonds to the 1993 Bonds have been met; and

WHEREAS, the Common Council of the City of Fort Wayne deems it advisable to issue the revenue bonds authorized by this Ordinance as "City of Fort Wayne, Indiana, Waterworks Revenue Bonds of 1997" in original principal amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000) (the "1997 Bonds"), to be issued on parity with the 1993 Bonds, for the purpose of providing the costs of construction of the Project and the costs of issuing the 1997 Bonds; and



1 WHEREAS, in order to pay current expenses of the Project prior to the issuance  
2 of such waterworks revenue bonds, the Common Council deems it advisable to authorize  
3 a bond anticipation note or notes payable solely from proceeds of the 1997 Bonds(the  
4 "BAN").

5 WHEREAS, the Common Council finds that all conditions precedent to the  
6 adoption of an ordinance authorizing the issuance of said revenue bonds and the issuance  
7 of said BAN have been complied with in accordance with the provisions of the Act; and

8 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
9 THE CITY OF FORT WAYNE, INDIANA:

10 SECTION. 1. Authorization for Project. The City shall proceed with the Project  
11 in accordance with the plans and specifications heretofore prepared and filed by the  
12 engineers employed by the City, which plans and specifications are by reference made a  
13 part of this ordinance as fully as if the same were attached hereto and incorporated herein  
14 and two copies of which are now on file in the Office of the Board of Public Works of  
15 the City, and are open for public inspection. The cost of construction of the Project shall  
16 be approximately Six Million Dollars (\$6,000,000), as estimated by the engineers. The  
17 terms "waterworks," "works," and other like terms where have been used in this  
18 ordinance shall be construed to mean and include all structures and property of the City's  
19 water utility. The Project shall be constructed and the bonds herein authorized shall be  
20 issued pursuant to and in accordance with the provisions of the Act relating to the  
21 issuance of revenue bonds.

22 SECTION 2. Authorization and General Terms of Bonds.

- 23 (a) The City shall issue, if necessary, BANs for the purpose of procuring interim  
24 financing to apply to the cost of the Project. The City shall issue its BANS in  
25 an amount not to exceed \$6,000,000 to be designated "Waterworks Bond  
26 Anticipation Notes." Said BANs shall be numbered consecutively from 1  
27 upward, shall be in multiples of \$5,000, shall be dated as of the date of  
28 delivery thereof, and shall bear interest at a rate not to exceed 6% per annum  
29 (the exact rate or rates to be determined through negotiations with the  
30 purchaser of the BANs) payable upon maturity. The BANs will mature one  
(1) year after their date of delivery. The BANs are subject to renewal or  
extension at an interest rate or rate not to exceed 6% per annum (the exact  
rate or rates to be negotiated with the purchaser of the BANs). The term of  
the BANs and all renewal BANs may not exceed five (5) years from the date  
of delivery of the initial BANs. The BANs shall be registered in the name of  
the purchasers thereof.

31 The BANs shall be issued pursuant to IC 5-1-14-5 if sold to a financial  
32 institution or any other purchase or pursuant to IC 5-1.5-8-6.1 if sold to the  
33 Indiana Bond Bank. The principal of an interest on the BANs shall be payable



solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The revenue bonds will be payable solely out of and constitute a charge against the Net Revenues (hereinafter defined) of the waterworks of the City, including the works herein authorized to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired, on a parity with the 1993 Bonds.

(b) The City shall issue its waterworks revenue bonds in an amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000), to be designated "Waterworks Revenue Bonds of 1997,) for the purpose of procuring funds to apply to the cost of Project or refunding of the BAN, if issued. Such 1997 Bonds shall be signed in the name of the City by manual or facsimile signatures of the Mayor of the City (the "Mayor") and Controller of the City the ("Controller") and attested by the manual or facsimile signature of the Clerk of the City (the "Clerk"), who shall affix the seal of the City to each of the 1997 Bonds manually or shall have the seal imprinted or impressed thereon by facsimile or other means. In case any officer whose signature appears on the 1997 Bonds shall cease to be such officer before the delivery of such 1997 Bonds, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery thereof. The 1997 Bonds shall also be authenticated by the manual signature of the Registrar (as defined below).

The 1997 Bonds shall be sold at a price not less than 98.0% of the par value thereof shall be issued in fully registered form in denominations of Five Thousand Dollars (\$5,000) or any integral multiple thereof, shall be numbered consecutively from 1 up, shall be originally dated as of the first day of the month in which the 1997 Bonds are sold or as otherwise determined by the Controller, and shall bear interest at a rate or rates not exceeding eight percent (8%) per annum (the exact rate or rates to be determined by public sale) payable on the first (1st) day of June and December in each year, beginning on June 1, 1997. The 1997 Bonds shall mature serially on December 1 in the years and substantially in accord with the schedule set forth on Exhibit B, with such changes thereto as are approved by the Controller, including the authorization and issuance of the term bonds.

The Bonds of this issue may be issued in the form of term bonds in the amounts and maturities as approved by the City Controller upon advice of the financial advisor. If term bonds are issued they will be subject to mandatory sinking fund redemption in the years and amounts as set forth elsewhere in the Ordinance.

All payments of interest on the 1997 Bonds shall be paid by check or draft mailed one business day prior to the interest payment date to the registered owners thereof as of the last day of the month preceding the interest payment date at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent (as defined below) in writing by such



1 registered owner. All principal payments and premium, if any, on the 1997 Bonds shall  
2 be made upon surrender thereof at the principal corporate trust office of the Paying  
3 Agent in any coin or currency of the United States of America which on the date of such  
4 payment shall be legal tender for the payment of public and private debts.

5 Interest on 1997 Bonds shall be payable from the interest payment date to which  
6 interest has been paid next preceding the authentication date thereof unless such 1997  
7 Bonds are authenticated after the fifteenth (15th) day of the month preceding an interest  
8 payment date and on or before such interest payment date in which case they shall bear  
9 interest from such interest payment date, or unless authenticated on or before the  
10 fifteenth (15th) day of the month immediately preceding the first interest payment date,  
11 in which case they shall bear interest from the original date, until the principal shall be  
12 fully paid.

13 The 1997 Bonds, the 1993 Bonds and any bonds ranking on a parity therewith, as  
14 to principal, premium and interest, shall be payable from and are hereby secured by an  
15 irrevocable pledge of and shall constitute a charge upon all the net revenues, herein  
16 defined as the gross revenues of the waterworks after deduction only for payment of the  
17 reasonable expenses of operation, repair and maintenance but not including depreciation  
18 and payments in lieu of taxes (the "net revenues"), of the waterworks of the City, which  
19 bonds constitute a first charge on said net revenues. The City shall not be obligated to  
20 pay said bonds or the interest or premium, if any, thereon except from the net revenues  
21 of the works, and said bonds shall not constitute an indebtedness of the City within the  
22 meaning of the provisions and limitations of the constitution of the State of Indiana.

23 Any 1997 Bonds issued under this Ordinance may be initially issued in  
24 temporary form exchangeable for definitive bonds. The temporary bonds may be  
25 printed, lithographed or typewritten, shall be of such denominations as may be  
26 determined by the Controller, shall be in fully registered form and may contain such  
27 reference to any of the provisions of this Ordinance as may be appropriate. If temporary  
28 bonds are issued, definitive bonds will be executed and furnished without delay and  
29 thereupon the temporary bonds shall be surrendered for cancellation at the principal  
30 corporate trust office of the Registrar and the Registrar shall deliver in exchange for such  
31 temporary bonds an equal aggregate principal amount of definitive bonds of the same  
32 interest rates and maturities. Until so exchanged, the temporary bonds shall be entitled  
33 to the same benefits under this Ordinance as definitive bonds issued hereunder.

34 Each 1997 Bond shall be transferable or exchangeable only upon the books of  
35 the City kept for that purpose by the Registrar, by the registered owner thereof in person,  
36 or by his attorney duly authorized in writing, upon surrender of such 1997 Bond together  
37 with a written instrument of transfer or exchange satisfactory to the Registrar duly  
38 executed by the registered owner or his attorney duly authorized in writing, and  
39 thereupon a new fully registered bond or bonds in the same aggregate principal amount,  
40 and of the same maturity, shall be executed and delivered in the name of the transferee or  
41 transferees or the registered owner, as the case may be, in exchange therefor. The costs



of such transfer or exchange shall be borne by the City. The City, Registrar and Paying Agent may treat and consider the persons in whose name such 1997 Bonds are registered as the absolute owners thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest and premium, if any, due thereon.

In the event any 1997 Bond is mutilated, lost, stolen or destroyed, the City may execute and the Registrar may authenticate a new bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed, which new bond shall be marked in a manner to distinguish it from the bond for which it was issued, provided that, in the case of any mutilated bond, such mutilated bond shall first be surrendered to the Registrar, and in the case of any lost, stolen or destroyed bond there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to them. In the event any such bond shall have matured, instead of issuing a duplicate bond, the City and the Registrar may, upon receiving indemnity satisfactory to them, pay the same without surrender thereof. The City and the Registrar may charge the owner of such 1997 Bond with their reasonable fees and expenses in this connection. Any bond issued pursuant to this paragraph shall be deemed an original, substitute contractual obligation of the City, whether or not the lost, stolen or destroyed 1997 Bond shall be found at any time, and shall be entitled to all the benefits of this Ordinance, equally and proportionately with any and all other 1997 Bonds issued hereunder.

**SECTION 3. Terms of Redemption.** The 1997 Bonds maturing on or after December 1, 2005 are redeemable prior to maturity at the option of the City on December 1, 2004 or any date thereafter, on thirty (30) days' notice, in whole or in part, in any order of maturities selected by the City and by lot within a maturity, at 100% of face value, together with the following premiums:

2% if redeemed on December 1, 2004 or thereafter on or before November 30, 2005;  
1% if redeemed on December 1, 2005 or thereafter on or before November 30, 2006;  
0% if redeemed on December 1, 2006 or thereafter prior to maturity;

plus accrued interest to the date fixed for redemption.

Notice of such redemption shall be mailed by first-class mail or by registered or certified mail to the address of each registered owner as shown on the registration record of the City not more than sixty (60) days and not less than thirty (30) days prior to the date fixed for redemption except to the extent such redemption notice is waived by the owners of 1997 Bonds redeemed, provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any 1997 Bond shall not affect the validity of any proceedings for the redemption of any other 1997 Bonds. The notice shall specify the date and place of redemption, the redemption price and the CUSIP numbers of the 1997 Bonds called for redemption. The place of redemption may be determined by the City. Interest on the 1997 Bonds so called for redemption shall cease on the redemption



1 date fixed in such notice if sufficient funds are available at the place of redemption to  
2 pay the redemption price on the date so named, and thereafter, such 1997 Bonds shall no  
3 longer be protected by this Ordinance and shall not be deemed to be outstanding  
hereunder, and the holders thereof shall have the right only to receive the redemption  
price.

4 All 1997 Bonds which have been redeemed shall be cancelled and shall not be  
5 reissued; provided, however, that one or more new registered bonds shall be issued for  
the unredeemed portion of any 1997 Bond without charge to the holder thereof.

6 Prior to the date fixed for redemption, funds shall be deposited with the Paying  
7 Agent to pay, and the Paying Agent is hereby authorized and directed to apply such  
8 funds to the payment of, the BANs or the 1997 Bonds or portions thereof called for  
9 redemption, including accrued interest thereon to the redemption date. No payment shall  
10 be made by BAN or the Paying Agent upon any BAN or 1997 Bond or portion thereof  
called for redemption until such bond shall have been delivered for payment or  
cancellation or the Registrar shall have received the items required by this Ordinance  
with respect to any mutilated, lost, stolen or destroyed bond.

11 **SECTION 4. Appointment of Registrar and Paying Agent.** Fort Wayne  
12 National Bank, in Fort Wayne, Indiana is hereby appointed to serve as registrar and  
13 paying agent for the 1997 Bonds ("Registrar" or "Paying Agent"). The Registrar is  
14 hereby charged with the responsibility of authenticating the 1997 Bonds, and shall keep  
15 and maintain at its principal corporate trust office books for the registration and transfer  
16 of the 1997 Bonds. The Mayor is hereby authorized to enter into such agreements or  
17 understandings with such institution as will enable the institution to perform the services  
required of the Registrar and Paying Agent. The Controller is authorized to pay such  
fees as the institution may charge for the services it provides as Registrar and Paying  
Agent, and such fees may be paid as fiscal agency charges from the Waterworks Sinking  
Fund described herein to pay the principal of and interest on the 1997 Bonds.

18 The Registrar and Paying Agent may at any time resign as Registrar and Paying  
19 Agent by giving thirty (30) days written notice to the City and by first-class mail to each  
20 registered owner of the BANs or the 1997 Bonds then outstanding, and such resignation  
21 will take effect at the end of such thirty (30) days or upon the earlier appointment of a  
successor Registrar and Paying Agent by the City. Such notice to the City may be  
served personally or be sent by registered mail. The Registrar and Paying Agent may be  
22 removed at any time as Registrar and Paying Agent by the City, in which event the City  
23 may appoint a successor Registrar and Paying Agent. The City shall notify each  
24 registered owner of the BANs or the 1997 Bonds then outstanding by first-class mail of  
the removal of the Registrar and Paying Agent. Notices to registered owners of the  
BANs or the 1997 Bonds shall be deemed to be given when mailed by first-class mail to  
25 the addresses of such registered owners as they appear on the bond register. Any  
predecessor Registrar and Paying Agent shall deliver all the BANs or the 1997 Bonds  
26



and cash in its possession and the bond register to the successor Registrar and Paying Agent. At all times, the same entity shall serve as Registrar and as Paying Agent.

The provisions of this Section 4 are subject to the provisions of Section 21(h) to the extent Section 21(h) is applicable.

**SECTION 5. Form of Bonds; Book-Entry Bonds.** The form and tenor of the 1997 Bonds, shall be substantially as follows, all blanks to be filled in properly prior to delivery thereof:

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ALLEN

CITY OF FORT WAYNE

WATERWORKS REVENUE BOND OF 1997

Interest Rate	Maturity Date	Original Date	Authentication Date	CUSIP
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Registered Owner:

Principal Sum:

The City of Fort Wayne, in Allen County, State of Indiana, for value received, hereby promises to pay to the Registered Owner set forth above, solely out of the special fund hereinafter referred to, the Principal Sum set forth above on the Maturity Date set forth above (unless this bond is subject to and is called for redemption prior to maturity as hereinafter provided), and to pay interest thereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case interest shall be paid from such interest payment date, or unless this bond is authenticated on or before May 15, 1997 in which case it shall bear interest from the Original Date, which interest is payable semi-annually on the first day of June and December of each year, beginning on June 1, 1997.

1 The principal of this bond is payable at the principal corporate  
2 trust office of Fort Wayne National Bank, (the "Registrar" or "Paying  
3 Agent"), in Fort Wayne, Indiana. All payments of interest on this bond  
4 shall be paid by check or draft mailed one business day prior to the  
5 interest payment date to the registered owner hereof as of the fifteenth  
6 day of the month preceding the interest payment date at the address as it  
7 appears on the registration books kept by the Registrar or at such other  
8 address as is provided to the Paying Agent in writing by the registered  
9 owner. All payments of principal of this bond shall be made upon  
surrender thereof at the principal corporate trust office of the Paying  
Agent in any coin or currency of the United States of America which on  
the dates of such payment shall be legal tender for the payment of public  
and private debts.

10 This bond shall not constitute an indebtedness of the City of Fort  
11 Wayne within the meaning of the provisions and limitations of the  
12 constitution of the State of Indiana, and the City shall not be obligated to  
pay this bond or the interest thereon except from the special fund  
provided from the net revenues of the City's waterworks utility.

13 The terms and provisions of this bond are continued on the  
14 reverse side hereof and such terms and provisions shall for all purposes  
have the same effect as though fully set forth at this place.

15 It is hereby certified and recited that all acts, conditions and  
16 things required to be done precedent to and in the preparation and  
complete execution, issuance and delivery of this bond have been done  
17 and performed in regular and due form as provided by law.

18 This bond shall not be valid or become obligatory for any purpose  
19 until the certificate of authentication hereon shall have been executed by  
an authorized representative of the Registrar.

20 IN WITNESS WHEREOF, the City of Fort Wayne, in Allen  
21 County, Indiana, has caused this bond to be executed in its corporate  
22 name by the manual or facsimile signatures of the Mayor and Controller,  
its corporate seal to be hereunto affixed, imprinted or impressed by any  
23 means and attested manually or by facsimile by its City Clerk.



CITY OF FORT WAYNE, INDIANA

(SEAL OF CITY)

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Controller

ATTEST:

\_\_\_\_\_  
City Clerk

(Form of Registrar's Certificate of Authentication)

It is hereby certified that this bond is one of the bonds described in the within-mentioned Ordinance duly authenticated by the Registrar.

FORT WAYNE NATIONAL BANK  
as Registrar

By \_\_\_\_\_  
Authorized Representative

(To be printed on Reverse Side)

This bond is one of an authorized issue of bonds of the City of Fort Wayne, of like original date, tenor and effect, except as to denomination, numbering, interest rates, redemption terms and dates of maturity, in the total amount of \_\_\_\_\_ Dollars (\$\_\_\_\_), numbered from 1 up, issued for the purpose of providing funds to be applied to the payment of the costs of construction of an elevated water tower, maintenance facility, improvements to the chemical storage facility and to pay incidental expenses, as authorized by Ordinance No. \_\_ adopted by the Common Council of the City of Fort Wayne on the \_\_ day of \_\_, 1996, entitled "AN ORDINANCE concerning the construction of additions and improvements to the waterworks of the city of Fort Wayne,



1 the issuance of revenue bonds to provide the cost thereof, the collection,  
2 segregation and distribution of the revenues of said works, the  
3 safeguarding of the interests of the owners of said bonds, the issuance of  
4 notes in anticipation of bonds, other matters connected therewith, and  
5 repealing ordinances inconsistent therewith.

6 Pursuant to the provisions of the Act and said Ordinance, the  
7 principal of and interest on this bond and all other bonds of said issue,  
8 ranking on parity with the Waterworks Refunding Revenue Bonds of  
9 1993, now outstanding in the principal amount of Twenty-Two Million  
10 One Hundred Ten Thousand Dollars (\$22,110,000) and maturing on  
11 December 1, each year to and including December 1, 2006, and any  
12 bonds hereafter issued on a parity therewith are payable solely from the  
13 Waterworks Sinking Fund to be provided from the net revenues (defined  
14 as the gross revenues of the waterworks of the City after deduction only  
15 for the payment of the reasonable expenses of operation, repair and  
16 maintenance but not including depreciation and payments in lieu of  
17 taxes). This bond and the issue of which it is a part, together with any  
18 parity bonds hereafter issued, constitute a first charge against said net  
19 revenues.

20 The City of Fort Wayne irrevocably pledges the entire net  
21 revenues of said waterworks to the prompt payment of the principal of  
22 and interest on the bonds authorized by the Ordinance, of which this is  
23 one, the 1993 Bonds and any bonds ranking on a parity therewith, to the  
24 extent necessary for that purpose, and covenants that it will cause to be  
25 fixed, maintained and collected such rates and charges for service  
26 rendered by said works as are sufficient in each year for the payment of  
27 the proper and reasonable expenses of operation, repair and maintenance  
28 of said works and for the payment of the sums required to be paid into  
29 said Waterworks Sinking Fund under the provisions of the Ordinance. In  
30 the event the City or the proper officers thereof shall fail or refuse to so  
31 fix, maintain and collect such rates or charges, or if there be a default in  
32 payment of the interest on or principal of this bond, the owner of this  
33 bond shall have all of the rights and remedies provided for under Indiana  
34 law.

35 The City of Fort Wayne further covenants that it will set aside  
36 and pay into its Waterworks Sinking Fund a sufficient amount of the net  
37 revenues of said works to (a) pay the principal and interest payments on  
38 all bonds payable from the net revenues of the waterworks, as such  
39 principal and interest shall fall due, and (b) pay the necessary fiscal  
40 agency charges for paying all bonds and interest as required by the  
41 Ordinance. Such required payments shall constitute a first charge upon  
42 all the net revenues of said works.



1 The bonds of this issue maturing on or after December 1, 2005  
2 are redeemable at the option of the City on December 1, 2004 or any date  
3 thereafter, on thirty (30) days' notice, in whole or in part, in any order of  
4 maturities selected by the City and by lot within a maturity, at 100% of  
5 face value, together with the following premium:

6 2% if redeemed on December 1, 2004 or thereafter on or before November 30, 2005;  
7 1% if redeemed on December 1, 2005 or thereafter on or before November 30, 2006;  
8 0% if redeemed on December 1, 2006 or thereafter prior to maturity;

9 plus accrued interest to the date fixed for redemption.

10 The Bonds maturing on \_\_\_\_\_ are subject to  
11 mandatory sinking fund redemption on \_\_\_\_\_ in the years and  
12 amounts set forth below:

<u>Year</u>	<u>Amount</u>
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13 Notice of such redemption shall be mailed by first-class mail or  
14 by registered or certified mail not more than sixty (60) days and not less  
15 than thirty (30) days prior to the date fixed for redemption to the address  
16 of the Registered Owner as shown on the registration record of the City  
17 except to the extent such redemption notice is waived by the owners of  
18 the bond or bonds redeemed, provided, however, that failure to give such  
19 notice by mailing, or any defect therein, with respect to any bond shall  
20 not affect the validity of any proceedings for the redemption of any other  
21 bonds. The notice shall specify the date and place of redemption, the  
22 redemption price and the CUSIP numbers of the bonds called for  
23 redemption. The place of redemption may be determined by the City.  
24 Interest on the bonds so called for redemption shall cease on the  
25 redemption date fixed in such notice if sufficient funds are available at  
26 the place of redemption to pay the redemption price on the date so  
27 named, and thereafter, such bonds shall no longer be protected by the  
28 Ordinance and shall not be deemed to be outstanding thereunder, and the  
29 holders thereof shall have the right only to receive the redemption price.

30 If this bond shall not be presented for payment on the date fixed  
therefor, the City may deposit in trust with the Paying Agent or another  
financial institution approved by the City, an amount sufficient to pay  
such bond, and thereafter the Registered Owner shall look only to the



1 funds so deposited in trust with said financial institution for payment and  
2 the City shall have no further obligation or liability in respect thereto.

3 This bond is subject to defeasance prior to payment as provided  
4 in the Ordinance and the owner of this bond, by the acceptance hereof,  
5 hereby agrees to all the terms and provisions contained in the Ordinance.

6 This bond is transferable or exchangeable only upon the books of  
7 the City kept for that purpose at the office of the Registrar by the  
8 Registered Owner in person, or by his attorney duly authorized in  
9 writing, upon surrender of this bond together with a written instrument of  
10 transfer or exchange satisfactory to the Registrar duly executed by the  
11 Registered Owner or his attorney duly authorized in writing, and  
12 thereupon a new fully registered bond or bonds in the same aggregate  
13 principal amount, and of the same maturity, shall be executed and  
14 delivered in the name of the transferee or transferees or the Registered  
15 Owner, as the case may be, in exchange therefor. The City, any registrar  
16 and any paying agent for this bond may treat and consider the person in  
17 whose name this bond is registered as the absolute owner hereof for all  
18 purposes including for the purpose of receiving payment of, or on  
19 account of, the principal hereof and interest due hereon.

20 The bonds maturing in any one year are issuable only in fully  
21 registered form in the denomination of \$5,000 or any integral multiple  
22 thereof not exceeding the aggregate principal amount of the bonds  
23 maturing in such year.

## 24 STATEMENT OF INSURANCE

25 [Subject to actual insurance commitment]

26 \_\_\_\_\_ has issued a policy containing the  
27 following provisions with respect to this bond and all other bonds of this  
28 issue, such policy being on file at the principal office of the Paying  
29 Agent:

30 \_\_\_\_\_ hereby unconditionally and irrevocably agrees to  
31 pay for disbursement to the bondholders that portion of the principal of  
32 and interest on the bonds which is then due for payment and for which  
33 the City shall have failed to provide. Due for payment means, with  
34 respect to the principal, the stated maturity date thereof and does not refer  
35 to any earlier date on which the payment of principal of the bonds is due  
36 by reason of call for redemption, acceleration or other advancement of  
37 maturity, and with respect to interest, the stated date for payment of such  
38 interest.



1           Upon receipt of telephonic or telegraphic notice, subsequently  
2 confirmed in writing, or written notice by registered or certified mail,  
3 from a bondholder or the Paying Agent to \_\_\_\_\_ that the required  
4 payment of principal or interest has not been made by the City to the  
5 Paying Agent, \_\_\_\_\_ on the due date of such payment or within one  
6 business day after receipt of notice of such nonpayment, whichever is  
7 later, will make a deposit of funds, in an account with \_\_\_\_\_, N.A., or  
8 its successor as its agent (the "Fiscal Agent"), sufficient to make the  
9 portion of such payment not paid by the City. Upon presentation to the  
10 Fiscal Agent of evidence satisfactory to it of the bondholder's right to  
11 receive such payment and any appropriate instruments of assignment  
12 required to vest all of such bondholder's right to such payment in \_\_\_\_\_  
13 \_\_\_\_\_, the Fiscal Agent will disburse such amount to the bondholder.

14           As used herein the term "bondholder" means the person other  
15 than the City who at the time of nonpayment of a bond is entitled under  
16 the terms of such bond to payment thereof.

17           The policy is non-cancellable for any reason.

18                               \_\_\_\_\_ INSURANCE COMPANY

19                               (Form of Assignment)

20           FOR VALUE RECEIVED the undersigned hereby sells, assigns  
21 and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and  
22 Address) \$ \_\_\_\_\_ principal amount (must be a multiple of  
23 \$5,000) of the within bond and all rights thereunder, and hereby  
24 irrevocably constitutes and appoints \_\_\_\_\_, attorney to  
25 transfer the within bond on the books kept for the registration thereof  
26 with full power of substitution in the premises.

27                               \_\_\_\_\_  
28 NOTICE:   The signature to this  
29 assignment must correspond with the  
30 name as it appears on the face of the  
within bond in every particular, without  
alteration or enlargement or any change  
whatsoever.

31           Signature Guaranteed:



1  
2 NOTICE: Signature(s) must be  
3 guaranteed by a member firm of  
4 the New York Stock Exchange or a  
commercial bank or trust company.

5  
6 (End of Bond Form)

7 The 1997 Bonds shall initially be issued and held in book-entry form on  
8 the books of the central depository system, The Depository Trust Company, its  
9 successors, or any successor central depository system appointed by the City from time  
10 to time (the "Clearing Agency"), without physical distribution of bonds to the public.  
11 One definitive 1997 Bond of each maturity shall be delivered to the Clearing Agency  
12 and held in its custody. The City and the Registrar and Paying Agent may, in connection  
herewith, do or perform or cause to be done or performed any acts or things not adverse  
to the rights of the holders of the 1997 Bonds as are necessary or appropriate to  
accomplish or recognize such book-entry form 1997 Bonds.

13 So long as the 1997 Bonds remain and are held in book-entry form on the  
14 books of a Clearing Agency, then (1) any such 1997 Bond may be registered upon the  
15 books kept by the Registrar in the name of such Clearing Agency, or any nominee  
16 thereof, including CEDE & Co., as nominee of The Depository Trust Company; (2) the  
17 Clearing Agency in whose name such 1997 Bond is so registered shall be, and the City  
18 and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the  
19 absolute owner and holder of such 1997 Bond for all purposes of this Ordinance,  
20 including, without limitation, receiving payment of the principal of, premium, if any, and  
21 interest on such 1997 Bond, the receiving of notice and giving of consent; (3) neither the  
22 City nor the Registrar and Paying Agent shall have any responsibility or obligation  
23 hereunder to any direct or indirect participant, within the meaning of Section 17A of the  
24 Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person  
on behalf of which, or otherwise in respect of which, any such participant holds any  
interest in any 1997 Bond, including, without limitation, any responsibility or obligation  
hereunder to maintain accurate records of any interest in any 1997 Bond or any  
responsibility or obligation hereunder with respect to the receiving of payment of  
principal of, premium, if any, or interest on any 1997 Bond, the receiving of notice or the  
giving of consent; and (4) the Clearing Agency is not required to present any 1997 Bond  
called for partial redemption prior to receiving payment so long as the Registrar and the  
Clearing Agency have agreed to the method for noting such partial redemption.

25 If the City receives notice from the Clearing Agency which is currently  
26 the registered owner of the 1997 Bonds to the effect that such Clearing Agency is unable  
or unwilling to discharge its responsibility as a Clearing Agency for the 1997 Bonds or

1 the City elects to discontinue its use of such Clearing Agency as a Clearing Agency for  
2 the 1997 Bonds, then the City and Registrar and Paying Agent each shall do or perform  
3 or cause to be done or performed all acts or things, not adverse to the rights of the  
4 holders of the 1997 Bonds, as are necessary or appropriate to discontinue use of such  
5 Clearing Agency as a Clearing Agency for the 1997 Bonds and to transfer the ownership  
6 of each of the 1997 Bonds to such person or persons, including any other Clearing  
7 Agency, as the holders of the 1997 Bonds may direct in accordance with this Ordinance.  
8 Any expenses of such discontinuance and transfer, including expenses of printing new  
9 certificates to evidence the 1997 Bonds, shall be paid by the City.

10 So long as the 1997 Bonds remain and are held in book-entry form on the  
11 books of a Clearing Agency, the Registrar shall be entitled to request and rely upon a  
12 certificate or other written representation from the Clearing Agency or any participant or  
13 indirect participant with respect to the identity of any beneficial owner of 1997 Bonds as  
14 of a record date selected by the Registrar. For purposes of determining whether the  
15 consent, advice, direction or demand of a registered owner of a 1997 Bond has been  
16 obtained, the Registrar shall be entitled to treat the beneficial owners of the 1997 Bonds  
17 as the bondholders and any consent, request, direction, approval, objection or other  
18 instrument of such beneficial owner may be obtained in the fashion described in this  
19 Ordinance.

20 So long as the 1997 Bonds remain and are held in book-entry form on the  
21 books of The Depository Trust Company, the provisions of its standard form of Letter of  
22 Representations, if executed in connection with the issuance of the 1997 Bonds, as  
23 amended and supplemented, or any successor agreement shall control on the matters set  
24 forth herein. The Registrar, by accepting the duties of Registrar under this Ordinance,  
25 agrees that it will undertake the duties of "Agent" set forth therein and that those duties  
26 to be undertaken by either the "Agent" or the "Issuer" in paragraphs 2, 3, 4 and 12  
27 thereof shall be the responsibility of the Registrar. Further, so long as the 1997 Bonds  
28 remain and are held in book-entry form, the provisions of Section 5 of this Ordinance  
29 shall control over conflicting provisions in any other section of this Ordinance.

#### 30 **SECTION 6. Sale of Bonds.**

- 31 (a) The Controller is hereby authorized and directed to have the 1997 BANs prepared,  
32 and the Mayor, Controller are hereby authorized and directed to execute and attest  
33 the BANs in the form and the manner herein provided. The Controller is hereby  
34 authorized and directed to deliver the BANs to the respective purchasers thereof. At  
35 the time of delivery of the BANs, the Controller shall collect the full amount which  
36 the respective purchasers have agreed to pay therefor, which amount shall not be less  
37 than 99.0% of the face value of said BANs.
- 38 (b) The Controller is hereby authorized and directed to have the 1997 Bonds prepared,  
39 and the Mayor, Controller and Clerk are hereby authorized and directed to execute  
40 the 1997 Bonds in substantially the form and the manner herein provided. The



1 Controller is hereby authorized and directed to deliver the 1997 Bonds to the  
2 purchaser; thereupon, the Controller shall be authorized to receive from the  
3 purchaser the purchase price and take the purchaser's receipt for the 1997 Bonds.  
4 The amount to be collected by the Controller shall be the full amount which the  
5 purchaser has agreed to pay therefore, which shall be not less than 98.0% of the face  
6 value of the 1997 Bonds plus accrued interest to the date of deliver.

7 The 1997 Bonds shall be sold at public sale pursuant to I.C. 5-1-11. Each  
8 bid shall be accompanied by a certified or cashier's check or financial surety bond in an  
9 amount equal to one percent (1%) of the principal amount of the bonds to guarantee  
10 performance on the part of the bidder, with the successful bidder providing said amount  
11 by a certified or cashier's check or by wire transfer on the next business day following  
12 the award if said bidder provided a financial surety bond with the bid and that in the  
13 event the successful bidder shall fail or refuse to accept deliver of and pay for the bonds  
14 as soon as the bonds are ready for delivery, or at the time fixed in the notice, then said  
15 amount shall become the property of the City and shall be considered as the City's  
16 liquidated damages on account of such default. The 1997 Bonds, when fully paid for  
17 and delivered to the purchasers, shall be the binding special revenue obligations of the  
18 City, payable out of the net revenues of the City's waterworks to be set aside into the  
19 Sinking Fund as herein provided.

20 The Bonds shall be awarded by the Controller to the best bidder who has  
21 submitted his bid in accordance with the terms of this Ordinance, IC 5-1-11 and the  
22 notice of sale. The best bidder will be the one who offers the lowest net interest cost to  
23 the City, to be determined by computing the total interest on all of the bonds to their  
24 maturities and adding thereto the discount bid, if any, and deducting the premium bid, if  
25 any. The right to reject any and all bids shall be reserved. If an acceptable bid is not  
26 received on the date of sale, the sale may be continued from day to day thereafter  
27 without further advertisement for a period of thirty (30) days, during which time any bid  
28 which is lower than the best bids received at the time of the advertised sale will be  
29 considered.

30 The opinion of Barnes & Thornburg, bond counsel, approving the  
legality of the 1997 Bonds, will be furnished to the purchasers at the expense of the City.

31 **SECTION 7. Use of Proceeds of Bonds.** The accrued interest and  
32 premium, if any, received at the time of the delivery of the bonds shall be deposited in  
33 the Waterworks Sinking Fund continued below. The proceeds from the sale of the bonds  
34 shall be deposited in a bank or banks which are legally designated depositories for the  
35 funds of the City in a special account or accounts to be designated as "City of Fort  
36 Wayne Waterworks Construction Fund" (the "*Construction Fund*"). The funds in the  
37 Construction Fund, together with all investment earnings thereon, shall be expended  
38 only for the purpose of paying the cost of the improvements and extensions to the works  
39 approved by this ordinance and the expenses necessarily incurred in connection  
40 therewith. Any balance or balances remaining unexpended in such Construction Fund

1 after completion of improvements and extensions to the works, which are not required to  
2 meet unpaid obligations incurred in connection with such construction may be paid into  
3 the Waterworks Sinking Fund and used solely for the purposes of said Fund, or be used  
4 for any purpose or project for which the bonds could have been issued, all in accordance  
5 with applicable law.

6 **SECTION 8. Collection of Revenues; Funding Operation, Repair and**  
7 **Maintenance.** There shall be set apart and paid out of the gross revenues of the works  
8 into a cash operating fund which was created by the 1993 Ordinance and is hereby  
9 continued and designated as the Waterworks Operation and Maintenance Fund (the  
10 "Operation and Maintenance Fund") an amount necessary and sufficient to pay the  
11 monthly costs of operating, repairing and maintaining said waterworks. The moneys  
12 credited to the Operation and Maintenance Fund shall be used for the payment of the  
13 reasonable and proper operation, repair and maintenance expenses of the waterworks on  
14 a day-to-day basis, but none of the moneys in the Operation and Maintenance Fund shall  
15 be used for extensions, improvements, or additions. Payments in lieu of taxes shall be  
16 made not more frequently than semiannually on or about June 30 and December 31 and  
17 may be made only if the amounts required to be held as of such dates in the Sinking  
18 Fund pursuant to Section 9 are so held. Any balance in the Operation and Maintenance  
19 Fund may be transferred to the Sinking Fund if necessary to prevent a default in payment  
20 on the then outstanding 1997 Bonds.

21 **SECTION 9. Sinking Fund for Bonds.** The Waterworks Sinking Fund  
22 (the "Sinking Fund") is hereby continued as created by the 1993 Ordinance and  
23 designated and constituted as the special fund for the payment of the 1997 Bonds. The  
24 Sinking Fund shall be divided into two accounts hereby designated as the Waterworks  
25 Debt Service Account (the "Debt Service Account") and the Waterworks Reserve  
26 Account (the "Reserve Account").

27 There shall be set aside from the gross revenues of the works, after first  
28 making the required payments into the Operation and Maintenance Fund, and paid into  
29 the Debt Service Account of the Sinking Fund monthly, as available, a sufficient amount  
30 of the net revenues of the waterworks for the payment of (a) the interest on all bonds  
31 which by their terms are payable from the revenues of said waterworks, as such interest  
32 shall fall due, (b) the necessary fiscal agency charges for paying such bonds and interest,  
33 and (c) the principal of all bonds payable from the revenues of the waterworks, as such  
34 principal shall fall due. The monthly payments into said Debt Service Account shall be  
35 in an amount equal to at least one-sixth (1/6th) of the amount required for interest during  
36 the next succeeding six (6) calendar months and an amount equal to one-twelfth (1/12th)  
37 of the amount required for payments during the next succeeding twelve (12) calendar  
38 months for the hereinabove described purposes other than interest payments.

39 There shall be held in said Reserve Account, in addition to the amounts  
40 provided for in the 1993 Bonds, an amount which equals the following with respect to  
41 the 1997 Bonds and any additional bonds subsequently issued on a parity with the 1997



1 Bonds (the "Reserve Requirement"): the lesser of 10% of the proceeds thereof, the  
2 maximum annual principal and interest requirements thereon, or 125% of the average  
3 annual principal and interest requirements thereon. The Reserve Requirement is hereby  
4 determined to be reasonable. All money in the Reserve Account shall be used and  
5 withdrawn by the City solely for the purpose of making payment on the 1993 Bonds, the  
6 1997 Bonds and any additional bonds subsequently issued on a parity with the 1993  
7 Bonds and 1997 Bonds to the extent that available moneys in the Debt Service Account  
8 are insufficient for such purpose, or to make the final payments on such bonds when  
9 money in the Reserve Account, together with other money held in the Sinking Fund, is  
10 sufficient to make all remaining payments to final maturity, provided, notwithstanding  
11 the foregoing, amounts in the Reserve Account in excess of the Reserve Requirement  
12 shall be transferred from time to time to the Debt Service Account and thereupon applied  
13 to the required payments into the Debt Service Account as provided in the preceding  
14 paragraph. In the event moneys held in the Reserve Account are used to pay principal of  
15 and interest on the 1993 Bonds, the 1997 Bonds or any additional bonds subsequently  
16 issued on a parity with the 1993 Bonds and the 1997 Bonds, then such depletion of said  
17 Reserve Account to an amount less than the Reserve Requirement shall be made up from  
18 available net revenues within twelve (12) months from substantially equal monthly  
19 deposits, after required deposits to the Debt Service Account, to restore the balance of  
20 the Reserve Account to an amount equal to the Reserve Requirement.

21 To the extent applicable, the requirements of Section 21(d) with respect  
22 to the Reserve Account shall be satisfied.

23 Any excess revenues of the waterworks available after making the  
24 deposits required by Sections 8 and 9 above may be used to provide or restore any debt  
25 service reserve account established to secure junior bonds issued as contemplated by  
26 Section 16(d).

27 In no event shall any part of the Sinking Fund be used in calling bonds  
28 for redemption prior to maturity except to the extent that the amount then in the Debt  
29 Service Account of the Sinking Fund exceeds the amount required to pay the bonds  
30 which will mature within a period of twelve (12) calendar months next following the  
31 date of such redemption, together with all interest on the bonds payable in said period.  
32 Any such excess of funds above said required level may also be used in purchasing  
33 outstanding bonds at a price less than the then applicable redemption price, if first  
34 approved by the Common Council. Moneys in the Sinking Fund shall not be used for  
35 any purpose whatsoever except as stated in this section.

36 **SECTION 10. Funding Improvements to the Works and Payments in**  
37 **Lieu of Taxes.** Any excess revenues of the waterworks available after making the  
38 deposits required by Sections 8 and 9 may be set aside and paid into the special utility  
39 fund which was created by the 1993 Ordinance and is hereby continued and designated  
40 as the Waterworks Depreciation Fund (the "Depreciation Fund"), and be used to pay the  
41 cost of additions, improvements and extensions to the waterworks. No revenues of the

1 waterworks shall be deposited in or credited to the Waterworks Depreciation Fund which  
2 will interfere with the requirements of the Sinking Fund.

3 To the extent applicable, the requirements of Section 21(d) with respect  
4 to the Depreciation Fund shall be satisfied.

5 In the event of any deficiency at any time in the Operation and  
6 Maintenance Fund or the Sinking Fund, funds may be withdrawn from the Depreciation  
7 Fund for deposit into said Operation and Maintenance Fund or Sinking Fund in the  
8 amount of such deficiency.

9 **SECTION 11. Investments.** The moneys in any of such funds or  
10 accounts shall be invested in accordance with the laws of the State of Indiana relating to  
11 the depositing, holding, securing or investing of public funds, and in accordance with the  
12 arbitrage certificate delivered at the time of delivery of any bonds payable from such  
13 funds and accounts. Investments of amounts held in the Reserve Account shall have a  
14 term to maturity of not greater than ten (10) years or as provided by Indiana Law. To the  
15 extent applicable, the requirements of Section 21(d) with respect to permitted  
16 investments shall be satisfied.

17 All revenues derived from the operation of the waterworks and from the  
18 collection of water rates and charges and from the investment of moneys in the funds  
19 herein created shall be accounted for separate and apart from all other funds and  
20 accounts of the City. No moneys derived from the revenues of the waterworks  
21 (including investment income) shall be transferred to the general fund of the City or be  
22 used for any purpose not connected with the waterworks if such transfer or use would  
23 interfere with the flow of funds set forth herein.

24 Investment income from such funds and accounts shall, except as  
25 otherwise provided herein, be treated as revenues of the waterworks, and shall be used as  
26 provided in this Ordinance.

27 **SECTION 12. Books and Records.** The City shall keep proper books of  
28 records and accounts, separate from all of its other records and accounts, in which  
29 complete and correct entries shall be made showing all revenues collected from said  
30 works and deposited in said funds, all disbursements made therefrom on account of the  
31 operation of the works and to meet the requirements of the Sinking Fund, and all other  
32 financial transactions relating to said works, including the cash balances in each of the  
33 funds and accounts described herein as of the close of the preceding fiscal year. Upon  
34 written request, there shall be prepared and furnished to the original purchasers of the  
35 1997 Bonds and to any subsequent owner of the bonds at the time then outstanding, not  
36 more than four (4) months after the close of each fiscal year, operating income and  
37 expense and balance sheet statements of the works, covering the preceding fiscal year,  
38 which annual statements shall be certified by the Controller, or the person charged with  
39 the duty of auditing the books and records relating to the works, or such statements may



1 be prepared by an independent certified public accountant retained by the City for the  
2 purpose of preparing such statements. Copies of all such statements and reports shall be  
3 kept on file in the office of the Controller. Any owner or owners of the 1997 Bonds then  
4 outstanding shall have the right at all reasonable times to inspect the works and all  
5 records, accounts and data of the City relating thereto. Such inspections may be made by  
6 representatives duly authorized by written instrument.

7 **SECTION 13. Rate Covenant.** The City shall, to the fullest extent  
8 permitted by law, establish, maintain and collect just and equitable rates and charges for  
9 the use of and the services rendered by said waterworks, to be paid by the owner of each  
10 and every lot, parcel of real estate or building that is connected with and uses said  
11 waterworks by or through any part of the water system of the City, or that in any way  
12 uses or is served by such works. Such rates or charges shall be sufficient in each year for  
13 the payment of the proper and reasonable expenses of operation, repair and maintenance  
14 of the works, for depreciation and improvement, and for the payment of the sums  
15 required to be paid into the Sinking Fund. Such rates or charges shall, if necessary, be  
16 changed and readjusted from time to time so that the revenues therefrom shall always be  
17 sufficient to meet the expenses of operation, repair and maintenance, depreciation and  
18 improvement, and the requirements of the Sinking Fund. The reasonable value of any  
19 facility or service rendered to the City, or to any department, agency or instrumentality  
20 thereof, including the use of water for hydrants for fire protection or for any other  
21 purpose, shall be charged against the City and shall be paid for as the charges accrue, and  
22 the payments so received shall be deemed to be earnings derived from the operation of  
23 the waterworks and shall be used and accounted for in the same manner as other earnings  
24 derived from the operation of the waterworks. In no event shall the annual gross  
25 revenues of the waterworks after payment of the expenses of operation, repair and  
26 maintenance (but not including depreciation and payments in lieu of taxes) be less than  
27 one hundred and twenty percent (120%) of the annual interest and principal requirements  
28 of the 1997 Bonds and any additional bonds issued pursuant to Section 16 hereof. For  
29 these purposes, the interest rate on variable rate debt shall be assumed to be the average  
30 interest rate thereon in the preceding calendar year.

31 **SECTION 14. Defeasance.** If, when the 1997 Bonds or any portion  
32 thereof shall have become due and payable in accordance with their terms or shall have  
33 been duly called for redemption or irrevocable instructions to call the 1997 Bonds or any  
34 portion thereof for redemption shall have been given, and the whole amount of the  
35 principal and the interest so due and payable upon all of such bonds or any portion  
36 thereof then outstanding shall be paid, or (i) cash, or (ii) direct non-callable obligations  
37 of (including obligations issued or held in book entry form on the books of) the  
38 Department of the Treasury of the United States of America, and securities fully and  
39 unconditionally guaranteed as to the timely payment of principal and interest by the  
40 United States of America, to which direct obligation or guarantee the full faith and credit  
41 of the United States of America has been pledged, and to the extent permitted by Indiana  
42 law, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated  
43 AAA by Standard & Poor's Corporation or Aaa by Moody's Investors Service (or any

combination thereof), the principal of and the interest on which when due without reinvestment will provide sufficient moneys, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the 1997 Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the net revenues of the City's waterworks.

**SECTION 15. Additional Bonds.** The City reserves the right to authorize and issue additional bonds, payable out of the revenues of its waterworks, ranking on a parity with the 1997 Bonds for the purpose of financing the cost of future additions, extensions and improvements to the waterworks or to provide for a complete or partial refunding of the 1997 Bonds or other bonds payable out of the revenues of the waterworks, subject to the following conditions:

(a) The interest on and principal of all bonds payable from the revenues of the waterworks shall have been paid to date in accordance with the terms thereof, provided, this condition shall be deemed satisfied if any required amount is to be provided from the proceeds of the parity bonds or other funds of the City.

(b) As of the time of issuance of the additional parity bonds, the balance in the Reserve Account shall be at least equal to the Reserve Requirement for the 1997 Bonds and all then outstanding bonds ranking on a parity therewith, provided, this condition shall be deemed satisfied if any required amount is to be provided from the proceeds of the newly issued parity bonds or other funds of the City, and furthermore, the ordinance authorizing the proposed additional parity bonds must include a provision requiring the City to build the balance in the Reserve Account to an amount equal to the Reserve Requirement for the proposed additional parity bonds, unless the Reserve Account is fully funded as of the time of issuance of the additional parity bonds, from available net revenues within twelve (12) months from substantially equal monthly deposits after required deposits to the Debt Service Account.

(c) The net operating revenues of the waterworks in the fiscal year immediately preceding the issuance of any additional bonds ranking on a parity with the 1997 Bonds shall be not less than one hundred twenty percent (120%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the water rates and charges shall be increased or the service area or customer base shall be expanded sufficiently so that said increased rates and charges and/or volume applied to the previous fiscal year's operations would have produced net operating revenues for said year equal to not less than one hundred twenty percent (120%) of the



1 maximum annual interest and principal requirements of the then  
2 outstanding bonds and the additional parity bonds proposed to be issued;  
3 provided, however, annual principal and interest requirements of a series  
4 of bonds may be reduced in inverse order of maturity for purposes of this  
5 subsection by the balance in the Reserve Account allocable thereto. For  
6 purposes of this subsection, the records of the waterworks shall be  
7 analyzed and all showings shall be prepared by a certified public  
8 accountant or independent financial advisor employed by the City for that  
9 purpose.

10 (d) The principal of the additional parity bonds shall be  
11 payable annually on December 1 and the interest shall be payable  
12 semiannually on June 1 and December 1 during the periods in which  
13 principal and interest are payable, and, if the additional parity bonds are  
14 issued as capital appreciation bonds, the amount payable at maturity  
15 thereof shall be payable on June 1 and/or December 1 during the periods  
16 in which such maturity amounts are payable.

17 (e) Additional parity bonds issued as variable rate debt must  
18 be assumed to bear the maximum interest rate thereon for the purpose of  
19 certifying satisfaction of the 120% condition set forth above, and a  
20 maximum rate must be set for any such variable rate additional parity  
21 bonds. Furthermore, any put feature associated with such variable rate  
22 debt must be covered by remarketing proceeds or a liquidity facility  
23 issued by a provider which is either (i) rated in one of the two highest  
24 short-term rating categories of Moody's Investors Service or Standard &  
25 Poor's Corporation, or (ii) for as long as any 1997 Bonds are insured by  
26 the Bond Insurer (as defined in Section 21), acceptable to the Bond  
27 Insurer (as defined in Section 21).

28 (f) To the extent applicable, the requirements of Section 21(f)  
29 shall be satisfied.

30 **SECTION 16. Additional Covenants of the City.** For the purpose of  
31 further safeguarding the interests of the holders of the 1997 Bonds, it is specifically  
32 provided as follows:

33 (a) The City shall at all times maintain its waterworks in  
34 good condition and operate the same in an efficient manner and at a  
35 reasonable cost.

36 (b) So long as any of the 1997 Bonds are outstanding, the  
37 City shall maintain insurance on the insurable parts of said works of a  
38 kind and in an amount such as would normally be carried by private  
39 companies engaged in a similar type of business. All insurance shall be

placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. In addition to or in lieu of the foregoing, the City may provide for coverage on all or part of the works comparable to that described above through a self-insurance program. Insurance proceeds shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as net revenues of the works.

(c) So long as any of the 1997 Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber such works, or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except replaced equipment which may become worn out or obsolete or other property not required for proper operation and maintenance of the works.

(d) Except as provided in Section 15 hereof, so long as any of the 1997 Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the waterworks shall be authorized, executed, or issued by the City except such as shall be made subordinate and junior in all respects to the 1997 Bonds, unless all of the 1997 Bonds are redeemed, retired, or defeased coincidentally with the delivery of such additional bonds or other obligations.

(e) This Ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of any 1997 Bonds, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of said bonds or the interest thereon remain unpaid.

(f) The provisions of this Ordinance shall be construed to create a trust in the proceeds of the sale of the 1997 Bonds for the uses and purposes herein set forth. The provisions of this Ordinance shall also be construed to create a trust in the portion of the net revenues herein directed to be set apart and paid into the Sinking Fund and for the uses and purposes of said Fund as set forth in this Ordinance. The owners of the 1997 Bonds shall have all of the rights, remedies and privileges set forth under the Act in the event of default in the payment of the principal of or interest on any of the 1997 Bonds or in the event of default with respect to any of the provisions of this Ordinance or the Act.

**SECTION 17. Tax Covenants.** In order to preserve the exclusion of interest on the BANs or the 1997 Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the BANs or the 1997 Bonds, the City represents, covenants and agrees that:



1 (a) No person or entity, other than the City or another state or  
2 local governmental unit, will use proceeds of the 1997 Bonds or property  
3 financed by the BAN or 1997 Bond proceeds other than as a member of  
4 the general public. No person or entity other than the City or another  
5 state or local governmental unit will own property financed by 1997  
6 Bond proceeds or will have actual or beneficial use of such property  
pursuant to a lease, a management or incentive payment contract, an  
arrangement such as take-or-pay or output contract, or any other type of  
arrangement that differentiates that person's or entity's use of such  
property from the use by the public at large.

7 (b) No BAN or 1997 Bond proceeds will be loaned to any  
8 entity or person other than a state or local governmental unit. No BAN or  
9 1997 Bond proceeds will be transferred, directly or indirectly, or deemed  
transferred to a non-governmental person in any manner that would in  
substance constitute a loan of the BAN or 1997 Bond proceeds.

10 (c) The City will not take any action or fail to take any action  
11 with respect to the BANs or 1997 Bonds that would result in the loss of  
12 the exclusion from gross income for federal income tax purposes of  
13 interest on the BANs or 1997 Bonds pursuant to Section 103 of the  
14 Internal Revenue Code of 1986 as in effect on the date of issuance of the  
15 1997 Bonds (the "Code"), including, without limitation, the taking of  
16 such action as is necessary to rebate or cause to be rebated arbitrage  
profits on 1997 Bond proceeds or other monies treated as 1997 Bond  
proceeds to the federal government as provided in Section 148 of the  
Code, and will set aside such monies, which may be paid from  
investment income on funds and accounts, in trust for such purposes.

17 (d) The City will file an information report Form 8038-G  
18 with the Internal Revenue Service as required by Section 149 of the  
19 Code.

20 (e) The City will not make any investment or do any other act  
21 or thing during the period that any 1997 Bond is outstanding hereunder  
22 which would cause any 1997 Bond to be an "arbitrage bond" within the  
meaning of Section 148 of the Code and the regulations applicable  
thereto as in effect on the date of delivery of the 1997 Bonds.

23 The City will not take any action or fail to take any action with respect to the 1997  
24 Bonds that would result in the loss of the exclusion from gross income for federal  
25 income tax purposes of interest on the 1997 Bonds pursuant to Section 103(a) of the  
26 Code, and the City will not act in any manner which would adversely affect such  
27 exclusion.

1  
2 Notwithstanding any other provisions of this Ordinance, the foregoing  
3 covenants and authorizations (the "Tax Sections") which are designed to preserve the  
4 exclusion of interest on the 1997 Bonds from gross income under federal income tax law  
5 (the "Tax Exemption") need not be complied with if the City receives an opinion of  
6 nationally recognized bond counsel that any Tax Section is unnecessary to preserve the  
7 Tax Exemption.

8 **SECTION 18. Amendments.** Subject to the terms and provisions  
9 contained in this section, and not otherwise, the owners of not less than sixty-six and  
10 two-thirds per cent (66-2/3%) in aggregate principal amount of the 1997 Bonds then  
11 outstanding shall have the right, from time to time, anything contained in this Ordinance  
12 to the contrary notwithstanding, to consent to and approve the adoption by the City of  
13 such ordinance or ordinances supplemental hereto as shall be deemed necessary or  
14 desirable by the City for the purpose of modifying, altering, amending, adding to or  
15 rescinding in any particular any of the terms or provisions contained in this Ordinance,  
16 or in any supplemental ordinance; provided, however, that nothing herein contained shall  
17 permit or be construed as permitting:

18 (a) An extension of the maturity of the principal of or interest  
19 or premium, if any, on any 1997 Bond or an advancement of the earliest  
20 redemption date on any 1997 Bond; or

21 (b) A reduction in the principal amount of any 1997 Bond or  
22 the redemption premium or the rate of interest thereon, or a change in the  
23 monetary medium in which such amounts are payable; or

24 (c) The creation of a lien upon or a pledge of the revenues of  
25 the waterworks ranking prior to the pledge thereof created by this  
26 Ordinance; or

27 (d) A preference or priority of any 1997 Bond or Bonds over  
28 any other 1997 Bond or Bonds; or

29 (e) A reduction in the aggregate principal amount of the 1997  
30 Bonds required for consent to such supplemental ordinance.

31 If the City shall desire to obtain any such consent, it shall cause the  
32 Registrar to mail a notice, postage prepaid, to the addresses appearing on the registration  
33 books held by the Registrar. Such notice shall briefly set forth the nature of the proposed  
34 supplemental ordinance and shall state that a copy thereof is on file at the office of the  
35 Registrar for inspection by all owners of the 1997 Bonds. The Registrar shall not,  
36 however, be subject to any liability to any owners of the 1997 Bonds by reason of its



1 failure to mail such notice, and any such failure shall not affect the validity of such  
2 supplemental ordinance when consented to and approved as herein provided.

3 Whenever at any time within one year after the date of the mailing of  
4 such notice, the City shall receive any instrument or instruments purporting to be  
5 executed by the owners of the 1997 Bonds of not less than sixty-six and two-thirds per  
6 cent (66-2/3%) in aggregate principal amount of the 1997 Bonds then outstanding, which  
7 instrument or instruments shall refer to the proposed supplemental ordinance described  
8 in such notice, and shall specifically consent to and approve the adoption thereof in  
9 substantially the form of the copy thereof referred to in such notice as on file with the  
10 Registrar, thereupon, but not otherwise, the City may adopt such supplemental ordinance  
11 in substantially such form, without liability or responsibility to any owners of the 1997  
12 Bonds, whether or not such owners shall have consented thereto.

13 No owner of any 1997 Bond shall have any right to object to the adoption  
14 of such supplemental ordinance or to object to any of the terms and provisions contained  
15 therein or the operation thereof, or in any manner to question the propriety of the  
16 adoption thereof, or to enjoin or restrain the City or its officers from adopting the same,  
17 or from taking any action pursuant to the provisions thereof. Upon the adoption of any  
18 supplemental ordinance pursuant to the provisions of this section, this Ordinance shall  
19 be, and shall be deemed, modified and amended in accordance therewith, and the  
20 respective rights, duties and obligations under this Ordinance of the City and all owners  
21 of 1997 Bonds then outstanding, shall thereafter be determined exercised and enforced in  
22 accordance with this Ordinance, subject in all respects to such modifications and  
23 amendments. Notwithstanding anything contained in the foregoing provisions of this  
24 Ordinance, the rights and obligations of the City and of the owners of the 1997 Bonds,  
25 and the terms and provisions of the 1997 Bonds and this Ordinance, or any supplemental  
26 ordinance, may be modified or altered in any respect with the consent of the City and the  
27 consent of the owners of all the 1997 Bonds then outstanding.

28 Without notice to or consent of the owners of the 1997 Bonds, the City  
29 may, from time to time and at any time, adopt such ordinances supplemental hereto as  
30 shall not be inconsistent with the terms and provisions hereof (which supplemental  
ordinances shall thereafter form a part hereof),

31 (a) to cure any ambiguity or formal defect or omission in this  
32 Ordinance or in any supplemental ordinance; or

33 (b) to grant to or confer upon the owners of the 1997 Bonds  
34 any additional rights, remedies, powers, authority or security that may  
35 lawfully be granted to or conferred upon the owners of the 1997 Bonds;  
36 or

37 (c) to procure a rating on the 1997 Bonds from a nationally  
38 recognized securities rating agency designated in such supplemental

ordinance, if such supplemental ordinance will not adversely affect the owners of the 1997 Bonds; or

(d) to make any other change which is not to the prejudice of the owners of the 1997 Bonds; or

(e) to provide for the refunding or advance refunding of the 1997 Bonds.

To the extent applicable, any supplemental ordinance shall be subject to the requirements of Section 21(b).

**SECTION 19. Defaults.** In the event available moneys hereunder, subject to the restrictions on use of money held under this Ordinance as set forth herein, are insufficient to pay debt service on all bonds payable from the revenues of the waterworks when due, available moneys shall be applied, after payment of all costs and expenses associated therewith, to the 1997 Bonds and any additional bonds issued in accord with Section 15 hereof (together, "Parity Bonds") as follows:

First - To the payment to the persons entitled thereto of all installments of interest then due, including interest on any past due principal at the rate borne by such bond, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to such payment ratably, according to the amounts due on such installments, to the persons entitled thereto, without any discrimination or privilege; and

Second - To the payment to the persons entitled thereto of the unpaid principal of and premium on any of such bonds which shall have become due either at maturity or pursuant to a call for redemption (other than bonds called for redemption for the payment of which other moneys are held), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full the amounts due on any particular date, then to such payment ratably, according to the amount due on such date, to the persons entitled thereto without any discrimination or privilege.

During the continuance of any default in the payment of either principal of or interest or premium on any 1997 Bond or other Parity Bond, no payment shall be made with respect to any subordinate and junior bonds issued in accord with Section 16(d) hereof ("Junior Bonds"). Moneys available for payment to holders of Junior Bonds shall, in the event of an insufficient amount being available to pay all debt service with respect to the Junior Bonds when due, be applied to the Junior Bonds in accordance with the sequence and other terms set forth above with respect to payments regarding Parity Bonds unless otherwise provided in the ordinance authorizing the Junior Bonds.



1                   **SECTION 20.**       Approval of Official Statement. The distribution  
2 of the preliminary official statement with respect to the 1997 Bonds, substantially in the  
3 form presented to this meeting, with such changes and modifications as may be  
4 authorized by the Mayor, as evidenced by his signature thereon, is hereby authorized,  
5 approved and ratified, and this Council hereby deems final said official statement, as of  
6 its date, in accordance with the provisions of Rule 15c2-12 of the Securities and  
Exchange Commission, subject to completion as permitted by said Rule, and the  
Common Council further authorizes the distribution of the deemed final official  
statement, and the execution, delivery and distribution of such document as further  
modified and amended in the form of a final official statement.

7  
8                   **SECTION 21.** Provisions Regarding Bond Insurance. The provisions  
9 of this Section shall apply with respect to any 1997 Bonds owned or insured by the Bond  
Insurer (as defined below) except to the extent waived in writing by the Bond Insurer.

10                   (a)       Definitions. The terms:

11                   "Bond Insurer" shall mean \_\_\_\_\_ Insurance Company, a New  
12 York stock insurance company, or any successor thereto.

13                   "Bond Insurance Policy" shall mean the municipal bond new  
14 issue insurance policy issued by the Bond Insurer that guarantees  
payment of principal of and interest on the 1997 Bonds.

15                   (b)       Consent of Bond Insurer to Amendments Required. Any  
16 amendment or supplement to this Ordinance shall be subject to the prior  
17 written consent of the Bond Insurer. Any rating agency rating the 1997  
Bonds must receive notice of each amendment or supplement and a copy  
thereof at least fifteen (15) days in advance of its execution or adoption.

18                   (c)       Notices. The City shall furnish to the Bond Insurer:

19                   (1)       Within 120 days after the end of the City's fiscal year,  
20 budget for the new year; latest annual audited financial statements; a  
21 statement of the amount on deposit in the Reserve Account as of the last  
22 valuation (as described in (d) below); if not presented in the audited  
23 financial statements, a statement of the net revenues pledged to payment  
24 of 1997 Bonds in such fiscal year; the number of system users as of the  
25 end of the fiscal year; notification of the withdrawal of any system user  
comprising 4% or more of system sales measured in terms of revenue  
dollars since the last reporting date; and any significant plant retirements  
or expansions planned or undertaken since the last reporting date;

1  
2 (2) Official statement or other disclosure, if any, prepared in  
3 connection with the issuance of additional bonds, whether or not issued  
4 on a parity with the 1997 Bonds, within 30 days after the sale thereof;

5 (3) Notice of any draw upon the Reserve Account, or any  
6 deficiency as of the latest valuation due to market fluctuation in the  
7 amount on deposit in the Reserve Account;

8 (4) Notice of the redemption of any of the 1997 Bonds,  
9 including the principal amount, maturities and CUSIP numbers thereof;  
10 and

11 (5) Such additional information as the Bond Insurer may  
12 reasonably request from time to time.

13 (d) Valuation of Reserve Account and Depreciation Fund:  
14 Permitted Investments.

15 (1) Within ninety (90) days after the end of each fiscal year,  
16 amounts held in the Reserve Account shall be valued at the lesser of cost  
17 or the market value thereof. If the market valuation is less than ninety  
18 percent (90%) of the Reserve Requirement, the deficiency shall be  
19 restored within twelve (12) months from the date of the valuation (i) in  
20 twelve (12) substantially equal monthly deposits from the next available  
21 net revenues after required deposits to the Debt Service Account, and/or  
22 (ii) from revaluation of investments at the market value thereof, exclusive  
23 of accrued interest.

24 The value of such investments shall be determined as follows:

25 (A) as to investments the bid and asked prices of which are  
26 published on a regular basis in The Wall Street Journal  
27 (or, if not there, then in The New York Times): the  
28 average of the bid and asked prices for such investments  
29 so published on or most recently prior to the time of  
30 determination;

31 (B) as to investments the bid and asked prices of which are  
32 not published on a regular basis in The Wall Street  
33 Journal or The New York Times: the average bid price at  
34 the time of determination for such investments by any two  
35 nationally recognized government securities dealers  
36 (selected by the Paying Agent in its absolute discretion) at



the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(C) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(D) as to any investment not specified above: the value thereof established by prior agreement between the City and the Bond Insurer.

(2) Notwithstanding anything in Section 10 to the contrary, the balance in the Depreciation Fund shall be at least equal to \$1,000,000 within three (3) years from the date of issuance of the 1997 Bonds. Thereafter, in the event moneys are withdrawn from the Depreciation Fund leaving a balance therein of less than \$1,000,000, valued at the lower of cost or the market value thereof, then such deficiency under \$1,000,000 shall be restored within eighteen (18) months from available net revenues after required deposits to the Sinking Fund. Furthermore, notwithstanding anything in Section 10 to the contrary, the balance in the Depreciation Fund shall be at least equal to \$333,000 one (1) year after the date of issuance of the 1997 Bonds, and at least equal to \$666,000 two (2) years after the date of issuance of the 1997 Bonds.

(3) All investments of the funds and accounts described in this Ordinance shall be limited to the following:

(A) direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee ("Direct Obligations");

(B) direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Loan Banks; participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation ("FHLMCs"); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities which are valued greater than par on the portion of unpaid principal) and senior debt obligations of the Federal National Mortgage Association ("FNMA's"); participation certificates of the General Services

Administration; guaranteed mortgage-backed securities and guaranteed participation certificates of the Government National Mortgage Association ("GNMAs"); guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financing of the U.S. Maritime Administration; guaranteed transit bonds of the Washington Metropolitan Area Transit Authority; Resolution Funding Corporation securities;

(C) direct obligations of any state of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "A" or better by Moody's Investors Service and "A" or better by Standard & Poor's Corporation, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, "A" or better by Moody's Investors Service and "A" or better by Standard & Poor's Corporation;

(D) commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, "P-1" by Moody's Investors Service and "A-1" or better by Standard & Poor's Corporation;

(E) Federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than 365 days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, provided legal opinions are received to the effect that full and timely payment of such deposit or similar obligation is enforceable against the principal office or any branch of such bank, which, at the time of purchase, has a short-term "Bank Deposit" rating of "P-1" by Moody's and a "Short-Term CD" rating of "A-1" or better by S&P;

(F) deposits of any bank or savings and loan association which has combined capital, surplus and undivided profits of not less than \$3 million, provided such deposits are



continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation;

(G) investments in money-market funds rated "AAAm" or "AAAM-G" by Standard & Poor's Corporation;

(H) repurchase agreements collateralized by Direct Obligations, GNMA's, FNMA's or FHLMC's with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated "P-1" or A3" or better by Moody's Investors Service, and "A-1" or "A-" or better by Standard & Poor's Corporation, provided:

a. a master repurchase agreement or specific written repurchase agreement governs the transaction; and

b. the securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent ("Agent") for the Trustee, and such third party is (i) a Federal Reserve Bank, (ii) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50 million or (iii) a bank approved in writing for such purpose by Financial Guaranty Insurance Company, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee; and

c. a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350 et seq. in such securities is created for the benefit of the Trustee; and

d. the repurchase agreement has a term of 180 days or less, and the Trustee or the Agent will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is

not restored within two business days of such valuation; and

- e. the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%.

(e) Defeasance and Redemption Provisions. Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the 1997 Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the 1997 Bonds shall remain outstanding for all purposes (including for purposes of Section 14 hereof), not be defeased or otherwise satisfied and not be considered paid by the City, and the pledge of security for the 1997 Bonds herein and all covenants, agreements and other obligations of the City to the registered owners of 1997 Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners.

In the event of an advance refunding, the City shall cause to be delivered a verification report of an independent nationally recognized certified public accountant.

(f) Conditions to Issuance of Additional Bonds. Notwithstanding satisfaction of other conditions to the issuance of additional bonds contained in Section 15 of this Ordinance, no such issuance may occur should any default hereunder have occurred and be continuing.

Additional parity bonds may be issued upon demonstration that net revenues, as certified by an independent firm of certified public accountants, equalled at least (i) 120% of maximum annual debt service on all outstanding bonds and proposed parity bonds and (ii) 100% of maximum annual debt service on all outstanding subordinate debt, in each case for a period of twelve (12) consecutive months during the eighteen (18) month period immediately preceding the proposed issuance date. For this purpose, net revenues may be adjusted to give effect to the following:

(1) Rates that went into effect prior to the issuance of the proposed bonds, as if they were in effect for the entire twelve (12) month test period;

(2) New customers which consist of existing residential, commercial and industrial dwellings that were connected to the works



1 prior to the issuance of the proposed bonds, as if such customers had  
2 been connected to the works for the entire twelve (12) month test period;

3 (3) The acquisition of a surrounding system prior to the  
4 issuance of the proposed bonds or a system that will be acquired with the  
5 issuance of the proposed bonds; and

6 (4) Long-term wholesale contracts entered into prior to the  
7 issuance of the proposed bonds which have a service agreement that  
8 extends beyond the final maturity of the proposed bonds to be issued.

9 (g) Payment Procedure. As long as the Bond Insurance  
10 Policy shall be in full force and effect, the City and any Paying Agent  
11 agree to comply with the following provisions:

12 (i) If, on the third day preceding any interest payment date for the  
13 1997 Bonds, there is not on deposit with the Registrar sufficient moneys  
14 available to pay all principal of and interest on the 1997 Bonds due on  
15 such date, the Registrar shall immediately notify the Bond Insurer and \_\_\_\_  
16 \_\_\_\_ N.A., New York, New York or its successor as its Fiscal Agent (the  
17 "Fiscal Agent") of the amount of such deficiency. If, by said interest  
18 payment date, the City has not provided the amount of such deficiency,  
19 the Registrar shall simultaneously make available to the Bond Insurer and  
20 to the Fiscal Agent the registration books for the 1997 Bonds maintained  
21 by the Registrar. In addition:

22 (A) The Registrar shall provide the Bond Insurer with a list of the  
23 bondholders entitled to receive principal or interest payments  
24 from the Bond Insurer under the terms of the Bond Insurance  
25 Policy and shall make arrangements for the Bond Insurer and its  
26 Fiscal Agent (1) to mail checks or drafts to bondholders entitled  
27 to receive full or partial interest payments from the Bond Insurer  
28 and (2) to pay principal of the 1997 Bonds surrendered to the  
29 Fiscal Agent by the bondholders entitled to receive full or partial  
30 principal payments from the Bond Insurer; and

31 (B) The Registrar shall, at the time it makes the registration books  
32 available to the Bond Insurer pursuant to (A) above, notify  
33 bondholders entitled to receive the payment of principal of or  
34 interest on the 1997 Bonds from the Bond Insurer (1) as to the  
35 fact of such entitlement, (2) that the Bond Insurer will remit to  
36 them all or part of the interest payments coming due subject to the  
37 terms of the Bond Insurance Policy, (3) that, except as provided  
38 in paragraph (ii) below, in the event that any bondholder is  
39 entitled to receive full payment of principal from the Bond

1 Insurer, such bondholder must tender his 1997 Bond with the  
2 instrument of transfer in the form provided on such 1997 Bond  
3 executed in the name of the Bond Insurer, and (4) that, except as  
4 provided in paragraph (ii) below, in the event that such  
5 bondholder is entitled to receive partial payment of principal from  
6 the Bond Insurer, such bondholder must tender such 1997 Bond  
7 for payment first to the Registrar, which shall note on such 1997  
8 Bond the portion of principal paid by the Registrar, and then, with  
9 an acceptable form of assignment executed in the name of the  
10 Bond Insurer, to the Fiscal Agent, which will then pay the unpaid  
11 portion of principal to the bondholder subject to the terms of the  
12 Bond Insurance Policy.

13 (ii) In the event that the Registrar has notice that any payment of  
14 principal of or interest on a 1997 Bond has been recovered from a  
15 bondholder pursuant to the United States Bankruptcy Code by a trustee in  
16 bankruptcy in accordance with the final, nonappealable order of a court  
17 having competent jurisdiction, the Registrar shall, at the time it provides  
18 notice to the Bond Insurer, notify all bondholders that in the event that  
19 any bondholder's payment is so recovered, such bondholder will be  
20 entitled to payment from the Bond Insurer to the extent of such recovery,  
21 and the Registrar shall furnish to the Bond Insurer its records evidencing  
22 the payments of principal of and interest on the 1997 Bonds which have  
23 been made by the Registrar and subsequently recovered from  
24 bondholders, and the dates on which such payments were made.

25 (iii) The Bond Insurer shall, to the extent it makes payment of  
26 principal of or interest on the 1997 Bonds, become subrogated to the  
27 rights of the recipients of such payments in accordance with the terms of  
28 the Bond Insurance Policy and, to evidence such subrogation, (1) in the  
29 case of subrogation as to claims for past due interest, the Registrar shall  
30 note the Bond Insurer's rights as subrogee on the registration books  
maintained by the Registrar upon receipt from the Bond Insurer of proof  
of the payment of interest thereon to the bondholders of such 1997 Bonds  
and (2) in the case of subrogation as to claims for past due principal, the  
Registrar shall note the Bond Insurer's rights as subrogee on the  
registration books for the 1997 Bonds maintained by the Registrar upon  
receipt of proof of the payment of principal thereof to the holders of such  
1997 Bonds. Notwithstanding anything in this Ordinance or the 1997  
Bonds to the contrary, the Registrar shall make payment of such past due  
interest and past due principal directly to the Bond Insurer to the extent  
that the Bond Insurer is a subrogee with respect thereto.

31 (h) Paying Agent Provisions. Notwithstanding any other  
32 provision of this Ordinance, no removal or resignation of the Paying  
33 Agent shall be effective until the Registrar has received notice of such  
34 removal or resignation from the Paying Agent.



1 Agent shall take effect until a successor has been appointed and has  
2 accepted the duties of Paying Agent. The Bond Insurer shall be furnished  
3 with written notice of the resignation or removal of the Paying Agent and  
4 the appointment of any successor thereto.

5 (i) Interested Parties. To the extent that this Ordinance  
6 confers upon or gives or grants to the Bond Insurer any right, remedy or  
7 claim under or by reason of this Ordinance, the Bond Insurer is hereby  
8 explicitly recognized as being a third-party beneficiary hereunder and  
9 may enforce any such right, remedy or claim conferred, given or granted  
10 hereunder.

11 Nothing in this Ordinance expressed or implied is intended or  
12 shall be construed to confer upon, or to give or grant to, any person or  
13 entity, other than the City, the Bond Insurer, the Registrar and Paying  
14 Agent and the registered owners of the 1997 Bonds, any right, remedy or  
15 claim under or by reason of this Ordinance or any covenant, condition or  
16 stipulation hereunder, and all covenants, stipulations, promises and  
17 agreements in this Ordinance contained by and on behalf of the City shall  
18 be for the sole and exclusive benefit of the City, the Bond Insurer, the  
19 Registrar and Paying Agent and the registered owners of the 1997 Bonds.

20 (j) Notices. The notice addresses for the Bond Insurer and  
21 the Fiscal Agent are as follows:

22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_  
29 \_\_\_\_\_

30 **SECTION 22. Repeal of Ordinance.** All Ordinances and parts of  
Ordinances in conflict herewith are hereby repealed, provided, however, that the  
Ordinance shall not be deemed in any way to repeal, -----, alter or modify the  
Ordinance authorizing the 1993 Bonds, nor be construed as adversely affecting the rights  
of the holders of the outstanding 1993 Bonds.

**SECTION 23. Severability.** If any section, paragraph or provision of  
this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity  
or unenforceability of such section, paragraph or provision shall not affect any of the

remaining provisions of this Ordinance.

**SECTION 24. Holidays, Etc.** If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this Ordinance, shall be a legal holiday or a day on which banking institutions in the City or the city in which the Registrar or Paying Agent is located are typically closed or on which the Fiscal Agent is authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed or on which the Fiscal Agent is authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

**SECTION 26. Effectiveness.** This Ordinance shall be in full force and effect from and after its passage, and any and all necessary approval by the Mayor.

  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay  
City Attorney



EXHIBIT A

Description of Project

Construction of a new elevated water tower, maintenance facility and improvements to the chemical storage facility at the water treatment plant.

EXHIBIT B

Maturity Schedule

<u>Year</u>	<u>Amount</u>
1997	385,000
1998	335,000
1999	350,000
2000	370,000
2001	390,000
2002	410,000
2003	430,000
2004	450,000
2005	475,000
2006	505,000
2007	535,000
2008	565,000
2009	595,000
2010	635,000
2011	<u>670,000</u>
	\$7,100,000



Read the first time in full and on motion by Crawford,  
and duly adopted, read the second time by title and referred to the  
Committee on Finance (and the City Plan Commission  
for recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Council Conference Room 128, City-County Building, Fort  
Wayne,, Indiana, on \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_

M., E.S.T.

DATED: 10-22-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford,  
and duly adopted, placed on its passage. PASSED  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>✓</u>
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY				<u>✓</u>
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 11-12-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 79-96  
on the 12th day of November, 1996

ATTEST:

Sandra E. Kennedy (SEAL) DD Schmidt  
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 13th day of November, 1996,  
at the hour of 3:00 o'clock P, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of November,  
1996, at the hour of 9:00 o'clock P M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR

BILL NO. S-96-10-10

REPORT OF THE COMMITTEE ON  
FINANCE  
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~XXXXXXXXXX~~) CONCERNING THE CONSTRUCTION  
OF ADDITIONS AND IMPROVEMENTS TO THE WATERWORKS OF THE CITY OF FORT  
WAYNE, THE ISSUANCE OF REVENUE BONDS TO PROVIDE THE COST THEREOF, THE  
COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID  
WORKS, THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SAID  
BONDS, THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS, OTHER  
MATTERS CONNECTED THEREWITH, AND REPEALING ORDINANCES INCONSISTENT  
THEREWITH

HAVE HAD SAID (ORDINANCE) (~~XXXXXXXXXX~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~XXXXXXXXXX~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Wm. D. Crawford

William A. Smith

Thomas H. Smith

Rebecca Casper

Diedre Hall

Thomas C. Henry

John N. Crawford

Clatus R. Edmonds

DATED: 11-12-96

Sandra E. Kennedy  
City Clerk